State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GOFFSTOWN EDUCATION ASSOCIATION NEA-NEW HAMPSHIRE Complainant	:	CASE NO. T-0228:16
v.	:	DECISION NO. 96-054
GOFFSTOWN SCHOOL BOARD Respondent	:	

APPEARANCES

Representing Goffstown Education Assoc.:

Marc Benson, UniServ Director

Representing Goffstown School Board:

Edward Kaplan, Esq.

Also appearing:

Gene Ross, Goffstown School Board
Patricia M. Keough, Goffstown Education Assoc.
Margaret Dolbow, Goffstown Education Assoc.
Richard M. Wood, Goffstown Education Assoc.

BACKGROUND

The Goffstown Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Goffstown School Board (Board) on April 19, 1996 alleging violations of RSA 273-A:5 I (g) and (h) relative to the Board's refusal to comply with a binding arbitration award and to a

breach of contract because the Board had compensated the Athletic Director in excess of the stipend provided in the collective bargaining agreement (CBA). The Goffstown School Board filed its answer on May 10, 1996 after which this matter was heard by the PELRB on June 25, 1996.

FINDINGS OF FACT

1. The Goffstown School Board is a "public employer" of teachers, as well as other professional and non-professional personnel employed in its School Department, within the meaning of RSA 273-A"1 X.

2. The Goffstown Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers and other professional staff, inclusive of extra-curricular positions, employed by the Board.

3. The Board and the Association were parties to a CBA which expired on August 31, 1993 and under which they continued to operate for the 1994-95 school year which terminated on August 31, 1995. That agreement provided an annual stipend for the athletic director of $4,845. On July 10, 1995, before the 1994-95 school year ended, the School Board, without negotiations, voted to increase the athletic director's stipend from $4,845 to $12,000 for the 1994-95 school year. The athletic director was so compensated at the higher stipened for the 1994-95 school year.

4. The CBA under which the parties operated for school year 1994-95 contained a four step grievance procedure ending with final and binding arbitration, subject to Chapter 542 appeal rights which were not invoked in this case.

5. On August 30, 1995, the Association filed a grievance alleging a violation of the CBA as the result of paying the athletic director a stipend in excess of that provided in the CBA. The grievance was processed through internal levels without resolution. Thereafter, on January 11, 1996, the Association advised the Board that it would be proceeding to arbitration. The parties agreed on Bruce Fraser as arbitrator who conducted the hearing on February 16, 1996 and issued an award on February 28, 1996.

6. Arbitrator Fraser was asked to decide if the Board

violated the CBA "when it paid the Athletic Director a stipend of more than $4,845 for the September 1, 1994 through August 31, 1995 school year? If so, what shall be the remedy?" He found that the Board had violated the agreement by so doing and directed two remedies. First, he directed that the Board "shall make every effort to reclaim the sum of $7,155 from [the Athletic Director] and shall inform the Association of the results of the effort." Second, he directed that the Board "shall also send the Association a written apology acknowledging that it erred when it paid [the Athletic Director] the additional $7,155 while he was still a bargaining unit member." We note that the athletic director's position has since been removed from the bargain-unit and that the act complained of in the grievance is not a continuing violation.

7. In response to the arbitrator's award, the Board sent a letter of explanation and apology to the Association on March 11, 1996. (Joint Exhibit No. 3). In it, it explained that it thought the athletic director's position had been removed from the bargaining unit at the time it awarded him the increased stipend and stated it did not "intend a slight or wrong to any district employee." It conveyed its regrets for problems this might have caused. On March 12, 1996, Superintendent Ross wrote the Athletic Director, in response to the other remedy in the award, requesting return of the $7,155 paid to him above the stated salary in the CBA. (Joint Exhibit No. 2). According to the pleadings and answer, the athletic director has refused to return the excess payment.

8. On March 26, 1996, the Superintendent informed the Association that the District would be taking no further action to recoup the over payment from the athletic director. The Association filed the instant ULP on April 19, 1996, alleging that Joint Exhibit No. 2 did not exhibit sufficient diligence to comply with the arbitrator's directive to use "every effort" to reclaim the overpayment. It seeks to have the Board found to have committed an unfair labor practice and ordered to take further steps, such as adjustment of future wages and/or legal action, to recover the over payment.

DECISION AND ORDER

We have examined the particulars of this case in great detail. The parties complied with their agreement to arbitrate as found in the CBA. The arbitrator found the conduct complained of to have been violative of the contract and directed two remedies, i.e., the attempt to reclaim and the apology. We find the apology to have been detailed, logical and sincere. We consider the Board to have complied with the "apology" remedy.

In looking at the directive to attempt to reclaim the over payment, we find the Board to have made a demand on the athletic director, a demand which apparently went unheeded by him. Meanwhile, his position has been removed from the bargaining unit. The Board and the athletic director could have engaged in a subterfuge of receiving the overpayment back from the Athletic Director who then would have been rehired with a bonus for accepting his new, non-unit position. They did not do so. The athletic director refused and/or failed to return the overpayment. His services must have been of superior quality or the Board would not have voted him the raise in the first instance. Likewise, the Board must have reserved to it an element of discretion, under the facts of this case, of how much it should spend to recover the overpayment from an employee it wishes to retain.

As this case unfolded, the athletic director's position was removed from the bargaining unit. This now is a case of "no harm, no foul." Given the totality of the circumstances and the lack of need or practicality of any further or remedial relief, we are satisfied with the Board's compliance with the arbitrator's admonition to attempt to reclaim the overpayment and DISMISS the ULP.

So Ordered.

Signed this 11th day of July, 1996.

EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard Roulx and Richard Molan present and voting.